

**DECISION RECORD  
AND  
FINDING OF NO SIGNIFICANT IMPACT**

Pumpkin Creek Ranch Land Exchange – Phase 1  
Environmental Assessment #MT-020-2005-353

**Serial Number:** MTM-89845

**State:** Montana

**County:** Custer

**Field Office:** Miles City Field Office

**Action:** Assembled, Facilitated Land Exchange

**Proponent:** The Conservation Fund (TCF) and the Bureau of Land Management (BLM)

**I. DECISION**

It is my decision to select the proposed action (preferred alternative) as described in Environmental Assessment #MT-020-2005-353, and approve Phase 1 of the Pumpkin Creek Ranch land exchange proposal between the BLM and TCF. The Pumpkin Creek Ranch land exchange will be consummated in two phases because the appraisal on the Custer County Federal lands will expire on June 15, 2007, and additional Federal lands need to be appraised; therefore, the total exchange cannot be approved prior to the June 15, 2007, expiration date. The additional Federal lands are BLM-administered lands, mainly in Carter County, on which a cultural survey was completed in 1989 and therefore are referred to as “89 Survey” Federal lands. In the current phase, Phase 1, the BLM will convey by patent to the recipients designated by TCF the lands and interests in land, excluding minerals, described in Exhibit 1 being forty-three parcels (CF1-CF22, CL1-CL13, CLY1, CLY2, H1, H2, PPLU1-PPLU3, and PPWU1) totaling 14,325.83 acres of surface estate. The patentee designed by TCF will donate to the BLM a permanent non-exclusive easement to a cultural site which has been determined eligible for listing on the National Register of Historic Places which will be retained and temporary non-exclusive easement(s) to the other eligible cultural sites on the subject Federal lands until monitoring and mitigation of the sites have been completed. TCF will convey by warranty deed to the BLM the lands and interests in land described in Exhibits 2 and 3, being twenty-two parcels (O-1, O-2, O-5 through O-8, the E½ of O-10, and O-11 through O-25) totaling 12,229.15 acres of surface estate and minerals as far as TCF acquired them with the non-Federal lands as identified in Exhibit 2 (an undivided 50% of all minerals were retained in a previous transaction on approximately 2,420 acres of non-Federal lands). Legal access to the acquired Phase 1 lands will be provided to the BLM from State Highway 59, through the exchange, and from the Tongue River Road through Phase 2 lands owned by TCF by means of a reciprocal right-of-way/easement if Phase 2 of the exchange is not consummated. In return for the reciprocal right-of-way/easement from TCF to the BLM for access to Phase 1 lands, the BLM will grant a reciprocal road right-of-way across Federal land in Section 20, T. 5 N., R. 48 E., to TCF for access to their private land in the adjoining Section 21. The conveyances are subject to the reservations and exclusions listed on the attachments. TCF will attempt to convert the rights-of-way to private easements effective at the time of closing. The patents will be subject to these rights-of-way if they are not converted to private easements. Associated water rights will be conveyed with the subject lands as shown in Exhibits 1 and 2; the value of these rights were factored into the appraisals. The BLM plans to acquire the four remaining parcels (O-3, O-4, O-9, and the W½ of parcel O-10) of non-Federal land in the Pumpkin Creek Ranch in exchange for additional “89 Survey” Federal lands in Carter County of total equal value in Phase 2 of the exchange proposal, and this will be documented in a separate Decision Record and Finding of No Significant Impact. A comprehensive multiple use management plan will be initiated following the completion of the

exchange. The plan will address wildlife, recreation, riparian, fisheries, travel management, and grazing management in accordance with the resource management plan. Environmental education opportunities could also be considered. This plan will be analyzed within a separate environmental assessment and be in accordance with all applicable laws and regulations. The two tracts of land (farmsteads) with buildings on the Pumpkin Creek Ranch will not be acquired by the BLM in either phase of the exchange. These tracts are an estimated 67.07 acres in the S<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub> and NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, Section 2, T. 5 N., R. 48 E., lying East of Highway 59 next to the non-Federal lands in Tract O-2 and an estimated 29.01 acres in the NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, Section 8, T. 5 N., R. 48 E., lying East of the Tongue River Road next to the non-Federal lands in Tract O-3.

The land exchange will be completed on an equal value basis. The market value of the lands being exchanged has been determined by appraisals prepared by a qualified appraiser. The appraisals have been completed in compliance with the BLM regulations and in accordance with the Uniform Appraisal Standards for Federal Land Acquisition published by the Department of Justice and the Uniform Standards of Professional Appraisal Practice. A qualified review appraiser has reviewed the appraisals to ensure that they are logical, consistent, and meet Federal standards.

I have determined that the public interest will be well served by the exchange of lands in Phase 1. The Phase 1 lands are manageable on their own whether or not Phase 2 occurs as a contiguous block of approximately 18,329 Federal acres will be created by the completion of Phase 1. The value of the Federal lands in Phase 1 is \$2,589,700 and the value of the non-Federal lands is \$2,568,122. A ledger account will be established to track the \$21,578 value difference, which is within 25 percent of the Federal land value. The values will be equalized at the final phase of the exchange. I have concluded that the exchange is in conformance with the approved land use plan and that the exchange will not result in significant environmental impacts.

The two-year grazing notices were sent to the grazing permittees on October 7, 2005, and a copy of the NOEP was sent to them on October 6, 2005. The grazing waivers were not signed, nor needed, as the permittees are the recipients designated by TCF to receive the patents for the subject Federal lands. Grazing permit fees will be adjusted on a prorated basis upon closing. All patents will include a reservation to the United States for a right-of-way for ditches and canals under the authority of the Act of August 30, 1890, and a reservation to the United States of all the minerals, with the right to itself, it's lessees and permittees to explore for, drill for, mine, extract, remove and dispose of all the minerals owned by, acquired by, or otherwise to vest in the United States, including, without limitation, necessary access and exit rights to build and maintain necessary improvements thereupon for the full enjoyment thereof. Patents will be issued subject to existing rights such as oil and gas leases and possibly rights-of-way. TCF will attempt to have existing rights-of-way converted to private easements to become effective upon closing. If for some reason a conversion to private easements cannot occur, then the patents will be issued subject to the rights-of-way. The 2920 agricultural permit on Tract H2 will be terminated prior to issuance of the patent as the permittee is the proposed recipient of this tract. The patent for Tract H2 will contain the appropriate floodplain restriction and restrictive language to protect the bald eagle nest which has been established on it (see the Water Resources/Water Rights/Floodplains and T&E Species sections below). Most rights-of-way for highways and roads and utilities on the non-Federal lands are authorized by deeds, therefore they will be included as exclusions in the warranty deed from TCF to the BLM, others are authorized as right-of-way and easement deeds and right-of-way easements, see Exhibit 3 for a list of these deeds and easements.

In the absence of any protests, the decision to exchange the Federal lands for the non-Federal lands will become the final determination of the Department of the Interior.

## II. RATIONALE FOR THE DECISION

**Public Interest Determination:** This land exchange opportunity will enable the BLM to consolidate land ownership in an area located 15 miles south of Miles City which is currently in a checkerboard pattern. With the assistance of TCF, acquisition of approximately 14,038.32 acres (12,229.15 acres in Phase 1 and 1,809.17 acres proposed in Phase 2) of the Pumpkin Creek Ranch will create a block of Federal land consisting of approximately 20,578 acres (19,498 acres within the ranch boundary and 1,080 acres of adjacent Federal land which will become accessible) for public use (dispersed recreation) and enhanced management of the BLM resource programs. The completion of Phase 1 of the exchange will create a block of Federal land consisting of approximately 18,329 acres (17,249 acres within the ranch boundary and 1,080 acres of adjacent Federal land); the remaining 1,809.17 acres of non-Federal lands are proposed to be acquired in Phase 2 and 440 acres of current Federal lands would become part of this large block. Access will be provided to the BLM from the Tongue River Road to the block of non-Federal land acquired in Phase 1. Approximately 1,920 acres of State land will also become accessible to the public. The ranch is accessible from Montana Highway 59/312 (the Broadus Highway) and the Tongue River Road.

The BLM will acquire the non-Federal lands through an assembled land exchange which will involve disposing of smaller isolated parcels of Federal land to TCF. TCF will in turn sell those lands to the grazing permittees. The land exchange will:

1. Consolidate the BLM land holdings within the Pumpkin Creek Ranch, which, when acquired, will offer a multitude of benefits to public land management opportunities. It will facilitate the BLM's involvement in the conservation of the Evergreen Shrubland/Perennial Graminoid Eco-Region by creating a large landscape with many habitat types; enhance management of the area for multiple use objectives and resources including livestock grazing, wildlife, rangeland and riparian, fuels/forest initiatives, Special Status Species and water (Pumpkin Creek is a perennial stream). It will also provide the public with hunting, recreational, and environmental education opportunities near Miles City. The Phase 1 lands are manageable on their own whether or not Phase 2 occurs as a contiguous block of approximately 18,329 Federal acres will be created by the completion of Phase 1.
2. Dispose of Federal lands that have limited or no access and are difficult to manage because of the small size and/or intermingled nature of the tracts with non-Federal lands owned by several private parties. Disposal of the Federal land parcels will improve administrative efficiency and reduce the BLM's costs to manage those parcels. Five grazing allotments will be eliminated and therefore, will no longer require administration by the BLM. As a result of Phase 1 of the land exchange, net public revenue from taxes and Payments in Lieu of Taxes (PILT) to Custer County will decrease by approximately \$1,363, and, as a result of the proposed Phase 2, will increase by approximately \$968 for a total net loss of less than \$500 annually. Long term public benefits will include increased management flexibility and reduce user conflicts between Federal land uses and private property, such as preventing trespass on private lands.

It has been determined that the public interest will be well served by consummation of Phase 1 of this land exchange as provided for in regulations at 43 CFR 2200.0-6(b). This exchange will provide the opportunity to achieve better resource management on Federal lands and meet the needs of State and local residents and their economies and provide enhancement of recreation opportunities and public access.

Phase 1 of the exchange allows the BLM to dispose of 43 scattered parcels of Federal land, many of which contain minimal resource values. The isolated nature of these parcels makes them difficult and expensive to manage, and future use of them by their private landowners will have no effect on

management objectives on adjacent Federal lands nor on Indian Trust Lands, as there are no adjacent Federal lands or Indian Trust Lands. The land exchange will not result in any undue or unnecessary environmental degradation.

The resource values and the public objectives that the Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired. The intended use of the conveyed Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands, as there are no adjacent Federal lands and all Federal lands within the allotments are being disposed of. The environmental impacts of the land exchange for the non-Federal and Federal lands were analyzed in Environmental Assessment #MT-020-2005-353. The following summarizes the impact of this Phase 1 of the land exchange on the natural resources and uses specific to the 14,325.83 acres of Federal land and the 12,229.15 acres of non-Federal land to be exchanged:

**Access:** The public will gain access to a net 12,354.52 acres of Federal land. Access will be lost to eight Federal tracts [CL2, CL9, CF2, CF7, CF17, CF18, H1, H2] and portions of three others [CL3, CL7, CF20], consisting of 3,592.63 acres, which are currently accessible. Seven of these tracts [CL2, CL3, CL7, CF2, CF7, CF17, CF20] consisting of 2,096.66 acres have access available by vehicle on a county road but then access to four of these tracts [CF2, CF7, CF17, CF20] consisting of 1,690.60 acres is by crawling through the fence and walking the tract and access to the other three [CL2, CL3, CL7] consisting of 406.06 acres is by walking because there are no vehicle trails. Two tracts [CF18, H1] consisting of 800 acres have limited access via foot and crawling through the fence at an exact common corner location within the Tongue River Road right-of-way. One tract [H2] consisting of 55.97 acres is accessible by the Tongue River. One other tract [CL9] consisting of 640 acres has access through Forest Service lands, then through State land, then through the fence. Although public access will potentially be lost to eight Federal tracts and a portion of three others, six of which are less than 200 acres each, the public will gain access to a block of Federal land consisting of 18,329 acres. The public will also gain access to 1,920 acres of State land. Access to and within this newly created block of Federal land will be by a State highway and a county road.

**Vegetative Resources:** There will be a net loss of approximately 2,097 acres of land under Federal ownership/management. No adverse impacts to the vegetative resources are expected to occur with the disposal of the Federal land parcels since land use is not expected to change. Acquisition of the non-Federal lands will create a large block of land with improved management opportunities which will focus on the conservation of the Shrubland/Perennial Graminoid Steppe Eco-Region within the Northern Great Plains.

**Wetland/Riparian Areas:** The proposed action will result in a net increase of approximately 8.75 miles of riparian habitat, primarily on Pumpkin Creek, which will be administered by the Miles City Field Office. Approximately .5 mile of riparian habitat on the Tongue River associated with Federal parcel H2, which is being exchanged, is difficult to manage due to the fact that it is intermingled with deeded lands and its small size and lack of access other than by the river. The land being acquired by the BLM will be arranged in a large contiguous block of land making the riparian habitat easier to manage allowing for improved resource conditions. Approximately 9.2 stream miles of riparian and wetlands habitat will be acquired by the BLM, the majority of which are associated with Pumpkin Creek, a perennial stream.

**Rangeland Resources:** There will be a net gain of approximately 646 Animal Unit Months (AUMs) [2,632 AUMs on the non-Federal lands; 1,986 AUMs on the Federal lands] under Federal administration. Since the prospective recipients of the Federal land parcels, which are all Section 3 lands,

are the current livestock permittees, there are no adverse impacts to their grazing operations. Conveyance of the Federal lands will result in a loss of 1,986 AUMs. Five allotments will be eliminated since no Federal land would remain after the exchange. There would be an administrative cost savings to the BLM with the elimination of the allotments and closure of three permittee case files @ \$2,600 per casefile. Range improvement projects of record on the Federal parcels will be turned over to the new landowners and the project files closed.

Acquiring the non-Federal land, in addition to the existing Federal land in the area, consolidates ownership and creates a larger block of grazing land with improved management opportunities and an estimated additional 2,632 AUMs available for Federal administration. Grazing allocation and use will be determined upon completion and approval of the management plan for the area. Existing range improvements on the non-Federal lands will be documented and project files established for them.

**Water Resources/Water Rights/Floodplains:** There will be a net loss of 20 Federal water rights. Land use is not expected to change; therefore, this loss will not create an adverse effect. Water resources associated with stock reservoirs and wells will leave Federal ownership. Forty-seven water rights will be transferred with the associated Federal lands in accordance with the BLM and State regulations. Thirty-two water rights associated with 16 reservoirs comprising 207 acre feet and 15 water rights associated with eight wells at 1-10 GPM with 50.11 acre feet for wildlife and no acre feet determined for the stock water rights will be transferred to the new land owners.

Water resources and rights on the non-Federal lands consist of reservoirs, wells, and instream rights. Water rights will be transferred with the associated non-Federal lands in accordance with the BLM and State regulations. Twenty-seven water rights totaling 300.17 acre feet and 5,368.50 cubic feet per second (cfs) will be acquired by the BLM with the non-Federal lands. In addition there is one well which has a total of 13.44 acre feet stock water right and two rights for irrigation purposes which total 225 cfs which will be prorated between the non-Federal lands to be acquired by the BLM and the lands to remain private in association with the buildings. The BLM will acquire the range improvements, which are considered “constructed assets”, but no Asset Acquisition Business Plan (AABP) will be required as these “Stewardship Assets” are excluded from the policy requiring the completion of an AABP prior to their acquisition.

The floodplain of the Tongue River below elevation of 2,680 feet on Federal tract H2 in Lots 8 and 9, Section 10, T. 2 N., R. 45 E., will carry with it the following patent restriction identified in Executive Order 11988: “The land may not be used for residential buildings; public service installations needing high protection; permanent memorial cemeteries; and similar type use and structures below the 100-year flood level.”

The following five non-Federal parcels, or portions of them, are situated within the 100-year floodplain of Pumpkin Creek per NRCS Soil Mapping Data, but will not require deed restrictions:

- **O-1** – S½NW¼, SE¼, N½SW¼, Section 1, T. 5 N., R. 48 E., floodplain of Pumpkin Creek;
- **O-2** – S½NE¼, NE¼SE¼, Section 2, T. 5 N., R. 48 E., floodplain of Pumpkin Creek;
- **O-18** - SW¼, Section 6, T. 5 N., R. 48 E., floodplain of Pumpkin Creek;
- **O-19** - N½NW¼, NE¼, NE¼SE¼, Section 7, T. 5 N., R. 48 E., floodplain of Pumpkin Creek;
- **O-20** - NE¼NW¼, W½NE¼, NW¼SE¼, SE¼SE¼, Section 17, T. 5 N., R. 48 E., floodplain of Pumpkin Creek.

**Wildlife, Fisheries:** The exchange will result in approximately 2,096.68 acres less of Federally-administered land, however, the proposed action is not expected to cause adverse impacts to aquatic and wildlife species, populations, or habitat since land use is not expected to change after the lands are

exchanged. Overall impact to wildlife habitats and aquatic species on the non-Federal lands will be positive as the consolidation of the Federal lands will allow the Federal government to manage livestock grazing, recreation, and other activities in a manner to improve and/or enhance wildlife and aquatic species habitat conditions. The BLM will acquire approximately 9.2 miles of riparian and wetlands habitat, the majority of which are associated with Pumpkin Creek which is important to numerous wildlife species, especially migratory birds and other game and non-game species. Approximately 0.5 mile of riparian and wetland habitat will be disposed of with Federal tract H2 for a net gain of 8.75 miles of Federally-administered riparian and wetland habitat.

**T&E Species:** There will be no effect to bald eagles, their primary prey base, or important habitat from the exchange of lands. There will be no effect on Federally-listed, proposed or candidate wildlife or plant species.

There will be a net increase of approximately 1,977.52 acres of bald eagle habitat under Federal administration. One active bald eagle nest on non-Federal tract O-20 will come under Federal administration and one active bald eagle nest on Federal parcel H2 will leave Federal management, with protective patent restrictions. A biological assessment has been completed for the bald eagles which includes protective measures which consist of the following language being included in the patent for Tract H2: "By acceptance of this patent, the patentee agrees for himself, his heirs, assigns, or successors to the following restrictions as to Lots 8 and 9, Section 10, T. 2 N., R. 45 E., for protection of an eagle nest, until such time as the Montana Fish, Wildlife and Parks monitoring determines that no nest on the parcel has been occupied for five consecutive years: 1. The land use will remain substantively the same with agricultural practices continuing where they are currently; 2. The nest tree and associated cottonwood gallery will not be removed or altered in a way by man-caused actions that could inhibit nesting; and 3. The parcel cannot be further developed for commercial or private purposes without first notifying the U.S. Fish and Wildlife Service (US F&WS) and Montana Fish, Wildlife and Parks." The US F&WS has the enforcement authority over the bald eagles.

No other threatened, endangered, or species proposed for listing are known to occur on the subject Federal lands.

The new bald eagle nest on the non-Federal lands will be monitored for nesting activity. Bald eagles also migrate through the subject area in the spring, fall, and winter time periods. Conversion to Federal ownership will potentially improve important habitats, especially Pumpkin Creek which is an important habitat for bald eagles. No other threatened, endangered, or species proposed for listing are known to inhabit the non-Federal lands.

The likelihood of Ute lady's tresses (*Spiranthes diluvialis*) occurring on any Federal or non-Federal parcels is remote and land use is not expected to change; therefore no impacts will result to potential habitat.

**Special Status Species:** *Special Status Species Determination of Impacts:* The proposed action is not expected to cause adverse impacts to special status species, populations, or habitat on the Federal lands since the land use is not expected to change. Selection of the preferred alternative will not remove any important or substantial habitat or individuals within the populations, which might lead to the need to list any BLM Designated Sensitive Species under the Endangered Species Act.

No impacts are expected to special status aquatic species and wildlife habitats and species on the Federal lands to be disposed of as land use is not expected to change. Current use of these Federal lands, which mainly consists of livestock grazing, is expected to continue. Management of the Federal lands is not

expected to change; therefore, the proposed disposal of these lands is not expected to cause an adverse impact to Special Status Species or BLM Sensitive species.

Consolidation of Federal lands will allow for management of one large block of land and can potentially improve present habitat conditions, especially the riparian area which includes Pumpkin Creek. There will be a net increase of approximately 640 acres of black-tailed prairie dog towns under Federal management. There is potential to improve this habitat for black-tailed prairie dogs and associated species as they will be under Federal management and within a large block.

One sage-grouse strutting ground on parcel O-16 and other important sagebrush habitats can potentially be enhanced by Federal management of those habitats, as can habitat for BLM Sensitive Species and US Fish and Wildlife Services' Birds of Conservation Concern, such as burrowing owls and numerous other migratory bird species. Restoration of riparian and potential habitat for plant Species of Special concern may occur under Federal management. The consolidation of the mineral estate is not expected to cause adverse impacts to sage-grouse from oil and gas development as the oil and gas occurrence and development potential is considered moderate in this area; there are currently no authorized oil and gas leases on the adjoining Federal minerals in the area; and there will be more protection under Federal administration, mitigation, and stipulations than currently under private ownership. Additionally, the BLM will hold or acquire at least a partial interest in all minerals in the area near the sage-grouse strutting ground and therefore, will be involved in any mineral leasing. This would include assessing impacts to sage-grouse and sagebrush habitats.

There are no known populations of plant Species of Special Concern documented on any of the Federal parcels. There are no BLM Sensitive or Watch plant species known to occur on the non-Federal lands. There is potential for plant Species of Special Concern to exist on some of the non-Federal lands. Acquisition of these lands can facilitate the restoration of riparian and potential habitat for plant Species of Special Concern.

**Cultural Resources:** The proposed action will impact a total of 17 cultural sites which have been determined eligible for listing on the National Register of Historic Places. One other eligible site, a prehistoric campsite and historic material scatter will be retained. The site will be buffered by an area which will be retained under Federal ownership. The exchange will have no effect on this site. A programmatic agreement will be used to address the adverse effects to the 17 eligible sites which will be transferred out of Federal ownership. These sites will be mitigated under a programmatic memorandum of agreement to be developed by the BLM and the Montana SHPO and accepted by the Advisory Council on Historic Preservation. The programmatic agreement will meet the requirements of 36 CFR 800.6 and will contain a research design and methodology and schedule for completing mitigation. The agreement will also contain provisions for allowing monitoring until the sites have been mitigated. The patentee designated by TCF will donate to the BLM a permanent non-exclusive easement to the eligible cultural site which will be retained and temporary non-exclusive easement(s) to the other eligible cultural sites which are located on the subject Federal lands until monitoring and mitigation of the sites has been completed. The Montana State Historic Preservation Office (SHPO) concurred with the BLM's determination of eligibility and effect and the proposed use of a programmatic agreement for mitigation on November 09, 2006.

If cultural resources exist on the non-Federal lands, they will be managed by the BLM after they are transferred to Federal ownership.

**Native American Religious Concerns:** The Native American Tribes in the area were sent certified copies of the Notice of Exchange Proposal (the mailing list can be found in Appendix 1 of the EA). One letter was received from a Tribal Historic Preservation Office regarding the notice, requesting

information about the existence of cultural resources found within the tracts of land to be exchanged. The BLM sent a response to the Tribe on April 6, 2007, with a comment period ending on April 20, 2007. To date the BLM has not heard from the Tribe. However if the BLM receives a response from the tribe the BLM will address their concerns. No other tribal requests have been received throughout the BLM's outreach efforts.

**Mineral Resources:** There are no mineral-related factors which will preclude this exchange. Conveyance of the lands is not expected to impede mineral exploration and development potential. Disposal of the Federal parcels will create a split-estate situation since the mineral estates will not be exchanged. The non-Federal minerals will be conveyed to the BLM, but only to the extent that TCF owns them (an undivided 50% of all minerals were retained in a previous transaction on approximately 2,420 acres of the non-Federal lands). The BLM does not expect the split-estate on the acquired lands to cause management problems or concerns in the future given the low probability of occurrence and potential for development of the locatable and saleable minerals. Although there is moderate potential for occurrence and development of oil and gas resources, and moderate to low potential for occurrence and development of coal resources, the exchange of lands is not expected to cause adverse impact to development and management of minerals and surface use. This is acceptable to all parties involved. Both the Federal and non-Federal parcels are considered to have similar mineral development potential. Leasing or permitting for speculative development can continue on the parcels subsequent to an exchange. The Leasable Mineral and Surface Interference Report indicates that the exercise of surface rights will not interfere unreasonably with operations under the Mineral Leasing Act.

The Federal minerals will be reserved in the patents issued for the Federal land parcels, and the patents will be issued subject to the oil and gas leases of record. The Liscom Creek area tracts (Tracts CL2 through CL9, CL11 through CL13, CLY1, and CLY2) have high development potential for oil, gas, and coal resources. These tracts are not contiguous and will not form a Logical Mining Unit (LMU). Only a few of the Federal tracts have legal access. Every one of them is adjacent to other tracts with Federal coal beneath private surface and tracts with private coal and private surface, therefore, surface owner consent will be required to create a LMU and to be able to mine them, even if the Federal surface were retained. Oil and gas leasing can occur if these Federal tracts are exchanged. Of the remaining Federal tracts, there are no mineral-related factors which will preclude the proposed exchange of Federal and non-Federal lands.

**Recreation Resources:** As a result of the exchange, there will be a net increase of approximately 12,354.52 acres of publicly-accessible Federal land available for recreational use by the public.

Recreation resources and recreational uses and use patterns will not be greatly affected on the majority of the land to be transferred out of Federal ownership, 32 parcels consisting of 10,733.20 acres, because the general public presently cannot access the lands. There will be a loss of recreational opportunities, primarily hunting, on eight tracts [CL2, CL9, CF2, CF7, CF17, CF18, H1, H2] and portions of three other tracts [CL3, CL7, CF20] of Federal lands, consisting of 3,592.63 acres, which will be disposed of which have legal access. It is often difficult for the general public to be able to determine exactly where the Federal lands are, therefore, at times resulting in their trespassing onto adjoining private lands. Trespass problems and conflicts on private lands associated with public use of the Federal land will be greatly reduced. There will be a loss of river-based recreational opportunities on 19.71 acres along the Tongue River with the disposal of parcel H2 (which consists of 55.97 acres but 36.26 are being farmed) which will not be replaced with the acquisition of the non-Federal lands. This tract is only accessible by the public from the river.

Acquisition of the non-Federal lands will consolidate ownership of Federal lands and enhance the recreation resources and recreational use and use patterns on the adjoining Federal lands by ease of access



to and within. There is high potential for dispersed recreation opportunities to occur on the newly-created block of 18,329 acres of Federal land, including, but not limited to wildlife viewing, waterfowl and upland bird hunting, hiking, picnicking, photography, big game hunting, camping, horseback riding, cross country skiing, and snowshoeing. There is potential to construct a large reservoir on the newly acquired land which would create additional recreational opportunities such as fishing, ice skating, swimming, canoeing, etc. Prairie dog shooting, which is presently seasonal, may become a popular recreational activity within the acquisition area, as a number of prairie dog towns thrive within the area. Environmental education opportunities will also be available.

**Visual Resource Management:** There will be a net loss of approximately 2,976 acres of Class II and a gain of approximately 879 acres of Class III Federal lands. Visual resources are not likely to be impacted by this exchange because land use is not expected to change.

**Land Status/Use Authorizations/Encumbrances/Unauthorized Use:** 14,325.83 acres of Federal (Section 3) land will be disposed of and 12,229.15 acres of non-Federal lands will be acquired, resulting in a net loss of 2,096.68 acres of Federally-administered land. The grazing waivers, which were sent to the grazing permittees with the two-year grazing notices on October 7, 2005, were not signed nor needed as the permittees are the recipients designated by TCF to receive the patents for the subject Federal lands. Grazing fees will be adjusted upon closing. Five allotments will be eliminated and three permittee grazing casefiles will be closed, resulting in reduced annual administrative cost in the amount of \$7,800 (\$2,600 per casefile) to the government. Range improvement projects of record on the Federal parcels will be turned over to the new landowners and the project files will be closed. Patents will include reservations for ditches and canals and minerals and will be issued subject to existing rights such as oil and gas leases and possibly rights-of-way, if they are not converted to private easements. Right-of-way files will be adjusted to reflect the action taken. The 2920 agricultural permit on Tract H2 will be terminated prior to issuance of the patent, as the permittee will be the recipient of the subject tract of land. The patent for Tract H2 will contain the appropriate floodplain patent restriction and a restriction to protect the existing bald eagle nest. Water rights will be conveyed with the Federal lands. Trespass problems and conflicts on private lands associated with public use of the Federal lands will be greatly reduced. There are no known unauthorized uses on the Federal tracts.

Conveyance of the non-Federal lands will be subject to existing rights of record. Existing State and county roads and utility lines on the acquired non-Federal lands will be documented by rights-of-way. Existing range improvements will be documented and project files will be established for them. Water rights will be conveyed with the non-Federal lands.

**Existing and Potential Land Uses:** 14,325.83 acres of Federal land will be disposed of and approximately 12,229.15 acres of non-Federal land will be acquired, resulting in a net loss of approximately 2,096.68 acres of Federally-administered land. Once conveyed, the Federal lands will continue to be used for grazing and hunting if allowed by the private land owners. Tract H2 will continue to be farmed, but will be conveyed with a patent restriction to provide protection for the existing bald eagle nest and with a 100-year floodplain use restriction. The potential for trespass, due to the current condition of the intermingled nature of the Federal tracts, will be eliminated.

The likely foreseeable use of the newly created block of Federal lands will be addressed within a comprehensive multiple use management plan, which will be initiated following the completion of the land exchange. The plan will address wildlife, recreation, riparian, travel management, fisheries, and grazing management in accordance with the resource management plan. There will also be opportunities for environmental education areas to be developed on these lands.

**Socio-Economic:** Livestock grazing will continue on the disposed Federal lands, because the land will be transferred to the base property owners. Grazing will also continue on the lands acquired by the BLM. There will be a net increase of approximately 646 Federal AUMs. Net change in annual revenues to the Federal government from livestock grazing permits will be increased by an estimated \$1,008; grazing revenues to State and county governments will be increased by about \$126. Estimated annual administrative costs to the BLM will be reduced by about \$7,800 because three grazing permits/case files will be closed. It is estimated that as a result of Phase 1 of the exchange the net public revenue from taxes and PILT to Custer County will decrease by approximately \$1,362.84 and as a result of Phase 2 would increase by approximately \$967.95 for a total net loss of less than \$500 annually.

#### Equal Value Requirements:

The Federal lands in Custer County were appraised as 43 separate parcels by Luther Appraisal Services, Inc. (report dated August 15, 2006 with date of valuation June 15, 2006) with Appraisal Review by Gary Lay, Appraisal Services Directorate (ASD) Staff Appraiser, and Appraisal Review Concurrence by Kim Klostermeier, ASD Lead Appraiser, on October 20, 2006, as follows:

#### Federal Lands – 43 parcels encompassing 14,325.83 acres = \$2,589,700

|  |                      |                    |
|--|----------------------|--------------------|
| 9 Parcels (CF12, CF19, CF21, CF22, CL13,<br>CLY2, PPLU2, PPLU3, PPWU1) at \$120/Acre | 1,189.62 acres = \$  | 142,700            |
| 1 Parcel (CF1) at \$125/Acre   | 149.51 acres = \$    | 18,700             |
| 2 Parcels (CLY1, PPLU1) at \$130/Acre  | 793.67 acres = \$    | 103,200            |
| 1 Parcel (CF8) at \$135/Acre   | 640.00 acres = \$    | 86,400             |
| 6 Parcels (CF5, CF6, CF10, CF13,<br>CF16, CL12) at \$140/Acre                        | 2,060.00 acres = \$  | 288,400            |
| 2 Parcels (CF20, CL11) at \$145/Acre   | 470.92 acres = \$    | 68,300             |
| 1 Parcel (CL9) at \$155/Acre   | 640.00 acres = \$    | 99,200             |
| 4 Parcels (CF3, CL1, CL4, CL5) at \$165/Acre   | 1,282.96 acres = \$  | 211,700            |
| 8 Parcels (CF4, CF9, CF11, CF14, CF15,<br>CL6, CL8, CL10) at \$175/Acre              | 4,098.00 acres = \$  | 717,200            |
| 1 Parcel (H2) at \$200/Acre  | 55.97 acres = \$     | 11,200             |
| 1 Parcel (CL3) at \$243/Acre   | 120.00 acres = \$    | 29,200             |
| 2 Parcels (CF7, H1) at \$245/Acre  | 530.60 acres = \$    | 130,000            |
| 1 Parcel (CL7) at \$252/Acre   | 180.68 acres = \$    | 45,500             |
| 1 Parcel (CF17) at \$275/Acre  | 640.00 acres = \$    | 176,000            |
| 1 Parcel (CF2) at \$300/Acre   | 640.00 acres = \$    | 192,000            |
| 1 Parcel (CL2) at \$320/Acre   | 193.90 acres = \$    | 62,000             |
| 1 Parcel (CF18) at \$325/Acre  | 640.00 acres = \$    | 208,000            |
| <b>43 Parcels of Federal Land</b>  | <b>14,325.83 ac.</b> | <b>\$2,589,700</b> |

The non-Federal lands were appraised as one parcel by Luther Appraisal Services, Inc. (report dated October 2006 and updated in December 2006, with date of valuation September 15, 2006) with appraisal review and approval by Kim Klostermeier, ASD Lead Appraiser, on December 19, 2006, as follows:

|                                       |                             |
|---------------------------------------|-----------------------------|
| Parcels O-1 through O-25 @ \$210/acre | 14,038.32 ac. = \$2,950,000 |
|---------------------------------------|-----------------------------|

This Phase 1 of the exchange will include the following non-Federal lands and values:

|   |                        |                      |
|---|------------------------|----------------------|
| <u>Phase 1 Non-Federal Lands – 22 parcels encompassing 12,229.15 acres @ \$210/ac = \$2,568,122</u> |                        |                      |
| - Parcels O-1, O-2, O-5 through O-8, W½ of O-10, and O-11 through O-25 =                            |                        | \$2,568,122          |
| - Rangeland =   | 11,488.83 acres        |                      |
| - Dry Crop =  | 288.00 acres           |                      |
| - Hayland =   | 330.00 acres           |                      |
| - Tame Pasture =  | 122.00 acres           |                      |
| - Waste =   | <u>.32 acres</u>       |                      |
| <b>22 Parcels of Non-Federal Lands</b>  | <b>12,229.15 acres</b> | <b>= \$2,568,122</b> |

Since the appraisal for the Federal lands in Phase 1 has an effective date of June 15, 2006, the contracting appraiser was contacted to see if there have been any recent sales or change in market data. By e-mail dated May 11, 2007, to Gary Lay of the ASD, the contracting appraiser advised that the review of the report and data shows that the values concluded are still valid and there is no indication that the isolated Federal land parcels have moved above the values concluded and supported in the appraisal report. The ASD submitted a memorandum dated May 15, 2007, to the BLM concurring with this conclusion. Also the ASD views the acquisition of the non-Federal land in two phases as an administrative decision by the BLM with agreement of the landowner. So allocating a value for each phase would not cause a problem as long as both phases are completed within a reasonable timeframe, which the BLM plans to do. If this were not to happen, then the Phase 2 non-Federal lands may need to be appraised again. So, there would be low risk in relying on the values to complete Phase 1 of the exchange.

The BLM plans to acquire the remaining 1,809.17 acres of non-Federal land within the Pumpkin Creek Ranch in the second phase of the exchange. A ledger account will be established to track the \$21,578 value difference, which is within 25 percent of the Federal land value. The values would be equalized at the final phase of the exchange. An equalization payment of \$21,578 would be paid to the BLM if for some reason Phase 2 of the proposed exchange is not completed, and would be deposited into the Federal Land Disposal Account established under the Federal Land Transaction Facilitation Act.

Although BLM policy is to reduce equalization as much as possible by excluding lands, and this also applies to ledger imbalances, Federal tracts, such as CF1 or H2, were not held over for Phase 2 because some of the identified benefits of doing the land exchange is to provide better management for both the BLM and the private land owners and to reduce BLM costs by eliminating grazing allotments/casefiles. If one of these Federal tracts were retained for use in Phase 2 and if for some reason Phase 2 was not completed, a grazing allotment/casefile for that one tract would still be required for administration by the BLM and it would require management by the BLM and the private land owner would have this one tract of BLM land to deal with. Also, if held back, these tracts would have to be re-appraised and the buy-sell agreements would expire and would have to be re-negotiated if the conveyance of the land is delayed until the second phase which is undesirable to the parties involved.

The Proposed Action will not cause disproportionately high or adverse effects on human health or environmental effects on low-income or minority populations as provided under Environmental Justice considerations. Economic impacts will not be noticed within the local economy.

**Forest Resources:** The proposed action will result in the disposal of a majority of the BLM forestlands in the Tongue River drainage and its tributaries. The non-Federal lands to be acquired have no forested lands, resulting in a decrease of approximately 2,020 acres of commercial forest and 2,158 acres of scattered forest, for a total decrease of 4,178 acres of forested Federal land. Much of this forested Federal land is not legally accessible for harvest. The value of the merchantable timber was considered in the appraisal of the lands.

**Invasive, Non-native Species:** There are no known noxious weeds present on the parcels of Federal land. The only known noxious weed that is currently within the non-Federal lands is Canada thistle (*Cirsium arvense*), but is not in quantities to be considered infestations or sources for problem weed areas.

**Solid or Hazardous Wastes:** Both parties to the land exchange have indicated in the Agreement to Initiate a Land Exchange that to the best of their knowledge, no known or suspected release, storage or disposal of hazardous substances has occurred on the Federal or non-Federal lands involved in the exchange. Environmental site assessments have been conducted on the non-Federal and Federal lands; the reports indicated that there is no evidence of potential recognized environmental conditions, as defined in the ASTM standard. These assessments will be updated, in conformance with the regulations under 40 CFR Part 312, prior to closing.

**Conformance with Land Use Plans:** This land exchange proposal lies within the area covered by the Record of Decision (ROD) for the Powder River Resource Area (PRRA) Resource Management Plan/Environmental Impact Statement (RMP/EIS), approved March 15, 1985, and is in conformance with this plan. The Federal lands can be disposed of by exchange (page 3 of the Record of Decision and page 42 of the PRRA RMP) and the non-Federal lands can be acquired based on meeting criteria identified in Appendix G on page 335 of the RMP. Most of the non-Federal lands are in a retention area according to the Powder River Resource Area RMP. The proposed acquisition is in conformance with the “Supplement to State Director Guidance for Resource Management Planning in Montana and the Dakotas” for “Land Pattern Review and Adjustment” (1984) and for “Access” (1989).

**Summary of Public Involvement:** A Notice of Exchange Proposal (NOEP) was signed on October 4, 2005, identifying all the lands involved in the exchange. The NOEP was published once a week for four consecutive weeks in the Miles City Star and Ekalaka Eagle, beginning on October 7, 2005. The NOEP was mailed to various Federal, State, and County agencies, adjoining land owners, environmental groups, sportsman’s groups, individuals and other interested organizations and parties.

Informational meetings were held with the Custer County Commissioners on May 23, 2006, and Carter County Commissioners on June 30, 2006. The Custer County Commissioners support the exchange as long as it does not cause the county to lose PILT or tax revenue. It is estimated that as a result of Phase 1 of the exchange the net public revenue from taxes and PILT to Custer County will decrease by approximately \$1,362.84 and as a result of Phase 2 would increase by approximately \$967.95 for a total net loss of less than \$500 annually. Another meeting will be held with the Custer County Commissioners to update them on the exchange and the fact that it will be phased. The Carter County Commissioners did not seem to have any major concerns with the proposed exchange. The county would see an increase in net public revenue from taxes and PILT if Phase 2 of the exchange is completed. The Resource Advisory Council (RAC) has been briefed on the exchange various times and they, along with the Custer County Commissioners, will tour the Pumpkin Creek Ranch later this spring. An informational meeting is proposed to be held in June 2007 in Miles City to update the public on the exchange and to initiate preliminary scoping for the proposed management plan. The RAC also wishes to be involved in the development of the management plan. The BLM met with the Montana Fish, Wildlife, and Parks (MFWP) on November 6, 2006, to address their concerns and explain the need to use certain lands, and had a follow-up meeting on March 21, 2007, regarding going with a phased exchange. The BLM also met with the Montana Department of Natural Resources and Conservation, Eastern Land Office, to discuss the exchange.

**Comments and Issues Raised by the Public:** Fourteen comment letters were received in response to the publication of the NOEP. The primary concerns and/or suggestions were as follows:

(1) Four letters from individuals supporting the proposed exchange and the opportunity for access to a large block of Federal land, the opportunity for more efficient management of the Federal and private lands, and economic benefits to the area from additional people coming to the area to use the block of Federal land;

(2) One letter from a special interest group supporting the proposed exchange and the opportunity to dispose of isolated parcels and provide the public with access to a large block of Federal land and additional access to State lands;

(3) One letter from the MFWP applauding the efforts to consummate the proposed exchange and providing public access, but suggesting that the larger tracts consisting of approximately 4,800 acres of accessible Federal land be retained; [The BLM agrees with the MFWP that public access in southeastern Montana is a priority. In fact, a purpose of this land exchange is to create a 20,550 plus acre block (after completion of both phases of the proposed exchange) of publicly-accessible lands. In addition, six tracts of publicly-accessible lands totaling 1,943 acres were dropped during our preliminary analysis phase prior to issuing the NOEP. A land exchange involves tradeoffs, in which many factors need to be considered and many questions answered such as: What are the resource values on the Federal lands slated for disposal? Is anyone interested in obtaining those Federal lands to begin with? What are the costs associated with retaining those Federal lands? The BLM then makes a decision based on an analysis of those tradeoffs. In the case of public access, the BLM believes the tradeoff is acceptable in that in Phase 1 of the exchange, the public will gain over 12,354 acres of publicly-accessible and contiguous lands, in exchange for the identified 2,930.60 acres of scattered publicly-accessible lands.]

(4) Five letters from adjoining landowners to the Pumpkin Creek Ranch most of which support disposing of the small parcels and creating a larger block of Federal land, but concerned about the proposed management of the Pumpkin Creek Ranch when and if it is acquired; [In general, the land will be managed under the multiple use policy like other public domain lands in the area. Specific management of the area will be established by a collaborative comprehensive management plan after the land exchange is completed.]

(5) One letter from an adjoining landowner to one of the scattered Federal parcels (which is not being used in Phase 1 of the exchange) supporting the tract going to private ownership;

(6) One letter from a Tribal Historic Preservation Office requesting information about the existence of cultural resources found within the tracts of land to be exchanged; [the BLM sent a response to the Tribe on April 6, 2007, with a comment period ending on April 20, 2007. The letter communicated the findings in the land exchange for cultural resources and to see if the Tribe has concerns over the land exchange, and to seek concurrence in the plans for mitigating impacts to the eligible sites which would be transferred out of Federal ownership. To date, the BLM has not heard from the Tribe. However if the BLM receives a response from the Tribe the BLM will address its concerns. No other tribal requests have been received throughout the BLM's outreach efforts.]

(7) One letter from a special interest group concerned about adequate protections for both sage-grouse and sharp-tailed grouse. [(a.) A plan for the proposed acquired area will be developed once the area becomes acquired. Livestock grazing will be addressed in the plan which could be a grazing system for the subject lands, and a rest rotation system could be part of the grazing system. (b.) The BLM has existing stipulations for oil and gas activities on Federal surface and Federal minerals which include a no surface occupancy stipulation within ¼ mile of grouse strutting grounds. (c.) A timing stipulation (no surface occupancy 3/1-6/15) is also applied if the proposed action is within 2 miles of a grouse lek. These stipulations do not apply to production and maintenance of the activity and the stipulations only apply to oil and gas activities. Presently sage and sharp-tailed grouse leks and other crucial habitats (i.e., winter

ranges) are taken into consideration in regards to any project on Federal lands. Those crucial wildlife habitats are protected and/or enhanced if possible. (d.) The BLM and the MFWP and other cooperators conduct sage and sharp-tailed grouse strutting ground counts annually and will include the proposed action area in the survey area for 2006. The BLM was also a signatory to the Management Plan and Conservation Strategies for Sage Grouse in Montana (MFWP, August 2004) which identifies conservation strategies for numerous issues which includes livestock grazing. (e.) A written agreement is beyond the scope of this Environmental Assessment decision.]

**Implementation Period:** Implementation of this decision to complete Phase 1 of this exchange will occur only upon expiration of the 45-day protest period and Governor's 60-day comment period, initiated by publication of the Notice of Decision, and after the resolution of any protests.

**Finding of No Significant Impact:** Based on the analysis of potential environmental impacts contained in the attached Environmental Assessment (EA), MT-020-2005-353, I have determined that, with mitigation, the proposed action (preferred alternative) will not have any significant impacts on the human environment, and an environmental impact statement is not required. A brief explanation is given as follows:

1. No significant effects were identified in the EA from the proposed action (preferred alternative).
2. The proposed action (preferred alternative) will not impact public health and safety.
3. There were no unique characteristics of the geographic area (e.g. prime farmlands, wetlands, wild and scenic rivers) adversely affected by the exchange of lands.
4. The proposed action is not a highly controversial action.
5. There are no highly uncertain effects or unique/unknown risks that would result with the implementation of the proposed action.
6. The proposed action does not establish a precedent for future actions with significant effects.
7. There were no cumulatively significant impacts identified through the NEPA analysis.
8. Seventeen of the parcels being exchanged are eligible for nomination to the National Register of Historic places. A programmatic agreement and temporary non-exclusive access easement(s) will be used to mitigate these sites. One eligible site will be retained under Federal ownership and a permanent non-exclusive easement will be received by the BLM for access to that site.
9. No adverse effects to endangered or threatened species habitat/populations were identified in the EA. Also, no adverse effects to BLM special status species habitat/populations were identified in the EA that might lead to the need to list any BLM designated Sensitive Species under the Endangered Species Act.
10. The disposal of Federal lands and interest in lands in exchange for the acquisition of non-Federal lands and interest in lands is authorized under Sections 205 and 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 USC 1715, et. seq.) and the regulations found at Title 43 Code of Federal Regulations Part 2200. There would be no violation of Federal, State or local law or requirements imposed for the protection of the environment as a result of the proposed action.
11. President's Energy Policy: as put forth in Executive Order 1312, decisions made by the Bureau of Land Management will take into consideration adverse impacts on the President's Energy Policy. This project, as proposed, will have no impact on this policy.

**Signature of the Authorized Officer:**

/s/ M. Elaine Raper

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Elaine Raper  
Field Manager

July 16, 2007

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Date

**Exhibit 1****PHASE 1 - FEDERAL DISPOSAL TRACTS  
PUMPKIN CREEK RANCH LAND EXCHANGE**

| <b>Parcel #<br/>Legal Description</b>             | <b>County/<br/>Permittee<br/>(Base Prop. Lessor)</b> | <b>Acreage</b> | <b>Valid Existing Rights<br/>R/W = Right-of-Way<br/>WR = Water Right</b>  | <b>Patent Reservations and/or Restrictions</b>   |
|---|--|----------------|---|--|
| PPWU1<br>T4N,R47E<br>S.34, E2E2                   | CUSTER/<br>ADAMS RANCH @<br>PUMPKIN CK               | 160.00         |   | Reservation for Ditches and Canals and of<br>all minerals.                                       |
| PPLU1<br>T3N,R47E<br>S.2, L1-4,S2N2,<br>W2SW,N2SE | CUSTER/<br>ADAMS RANCH @<br>PUMPKIN CK               | 473.67         |   | Reservation for Ditches and Canals and of<br>all minerals.                                       |
| PPLU2<br>T3N, R47E,<br>S.10, E2NE, W2SW,<br>NESE  | CUSTER/<br>ADAMS RANCH @<br>PUMPKIN CK               | 200.00         |   | Reservation for Ditches and Canals and of<br>all minerals.                                       |
| PPLU3<br>T3N, R47E,<br>S.18, N2NE                 | CUSTER/<br>ADAMS RANCH @<br>PUMPKIN CK               | 80.00          | WR - 39E 60793 00<br>(SWNE)<br>WR - 42C 79523 00<br>(SWNENE)  | Reservation for Ditches and Canals and of<br>all minerals.                                       |
| CL3<br>T1N, R45E,<br>S.10, NENE, NWSW,<br>SESW    | CUSTER/<br>COFFEE CATTLE<br>CO.                      | 120.00         | Comptv. O&G Lease<br>MTM-87663 Blakemore<br>Page P Jr. (Ex 12/31/07);<br>R/W MTM-59946<br>Custer Co. Road<br>NWSW, SESW (No<br>Expiration); R/W MTM-<br>59032 Range Tele<br>NWSW, SESW (No<br>Expiration)<br>WR - 42C 179575 00<br>(Sec 10) | Reservation for Ditches and Canals and of<br>all minerals.<br><br>Subject to O&G Lease MTM-87663 |
| CL4<br>T1N, R45E,<br>S.12, L 1-4                  | CUSTER/<br>COFFEE CATTLE<br>CO.                      | 183.55         |   | Reservation for Ditches and Canals and of<br>all minerals.                                       |
| CL7<br>T1N, R45E,<br>S24, L 1-4                   | CUSTER/<br>COFFEE CATTLE<br>CO.                      | 180.68         | R/W MTM-59946<br>Custer Co. Road L4 No<br>Expiration);<br>R/W MTM-57653<br>TRECO L2&4 (Expires<br>07/30/2034)<br>WR - 42C 179575 00<br>(Sec 24)   | Reservation for Ditches and Canals and of<br>all minerals.                                       |
| CL8<br>T1N, R45E,<br>S.26, S2                     | CUSTER/<br>COFFEE CATTLE<br>CO.                      | 320.00         |   | Reservation for Ditches and Canals and of<br>all minerals.                                       |

| Parcel #<br>Legal Description                       | County/<br>Permittee<br>(Base Prop. Lessor) | Acreage | Valid Existing Rights<br>R/W = Right-of-Way<br>WR = Water Right  | Patent Reservations and/or Restrictions  |
|---|---|---------|--|--|
| CL9<br>T1N, R45E,<br>S.34, ALL                      | CUSTER/<br>COFFEE CATTLE<br>CO.             | 640.00  | WR - 42C 79458 00<br>(NESENW)<br>WR - 42C 79459 00<br>(NESENW)<br>WR - 42C 78460 00<br>(NESWNW)<br>WR - 42C 79461 00<br>(NESWNW)<br>WR - 42C 79462 00<br>(SWSWNW)<br>WR - 42C 79463 00<br>(SWSWNW)<br>WR - 42C 79464 00<br>(NWSWNW)<br>WR - 42C 79465 00<br>(SWSWNW)<br>WR - 42C 79466 00<br>(NWSWNW)<br>WR - 42C 79467 00<br>(SWSWNW) | Reservation for Ditches and Canals and of<br>all minerals.   |
| CL12<br>T1N, R46E,<br>S.6, SESW, SESE               | CUSTER/<br>COFFEE CATTLE<br>CO.             | 80.00   | WR - 42C 179577 00<br>(Sec 6)  | Reservation for Ditches and Canals and of<br>all minerals.   |
| CL13<br>T1N, R46E,<br>S.30, L 1                     | CUSTER/<br>COFFEE CATTLE<br>CO.             | 49.32   | O&G Lease MTM-<br>89557 – Quanco LLC<br>(Sus Ops & Prod/No<br>Pmt – SEIS)  | Reservation for Ditches and Canals and of<br>all minerals.<br>Subject to O&G Lease MTM-89557.  |
| CLY2<br>T1N, R47E,<br>S.6, SESE                     | CUSTER/<br>COFFEE CATTLE<br>CO.             | 40.00   |  | Reservation for Ditches and Canals and of<br>all minerals.   |
| CL1<br>T1N, R45E,<br>S.2, L 5-12                    | CUSTER/<br>COFFEE CATTLE<br>CO.             | 339.41  |  | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |
| CL5<br>T1N, R45E<br>S.14, W2SW, SESW                | CUSTER/<br>COFFEE CATTLE<br>CO.             | 120.00  | WR - 42C 179575 00<br>(Sec 14)   | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |
| CLY1<br>T1N, R46E,<br>S.10, SENW, E2SW,<br>SWSW, SE | CUSTER/<br>COFFEE CATTLE<br>CO.             | 320.00  | WR - 42C 30012987<br>(NWSE)  | Reservation for Ditches and Canals and of<br>all minerals.   |
| CF3<br>T2N, R45E,<br>S.24, ALL                      | CUSTER/<br>COFFEE CATTLE<br>CO.             | 640.00  |  | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |



| Parcel #<br>Legal Description                   | County/<br>Permittee<br>(Base Prop. Lessor) | Acreage | Valid Existing Rights<br>R/W = Right-of-Way<br>WR = Water Right  | Patent Reservations and/or Restrictions   |
|---|---|---------|--|---|
| CL2<br>T1N, R45E,<br>S.4, L 5-8, SWNE           | CUSTER/<br>COFFEE CATTLE<br>CO.             | 193.90  | R/W MTM-59946<br>Custer Co Road L5,<br>SWNE (No Expiration);<br>R/W MTM-57653<br>TRECO Pwrln; L5,6,<br>SWNE (Expires<br>07/30/2034); R/W<br>MTM59032 Range Tele<br>SWNE (No Expiration)  | Reservation for Ditches and Canals and of<br>all minerals.  |
| CL6<br>T1N, R45E<br>S.22, N2                    | CUSTER/<br>COFFEE CATTLE<br>CO.             | 320.00  |  | Reservation for Ditches and Canals and of<br>all minerals.  |
| CL10<br>T2N, R45E,<br>S.34, N2, E2SW, SE        | CUSTER/<br>COFFEE CATTLE<br>CO.             | 560.00  | Non-Comptv. O&G<br>Lease MTM-023239C<br>Conoco Phillips Co.<br>(held by production);<br>O&G Communitization<br>Agreement MTM-69166<br>Constitution Gas Trn –<br>production from MTM-<br>023239C);<br>R/W MTM-30915<br>Liscom Ck Station LLC<br>Gas Pipln NENE<br>(Expires 05/19/2035);<br>R/W MTM-57653<br>TRECO Pwrln NENE<br>(Expires 07/30/2034). | Reservation for Ditches and Canals and of<br>all minerals.<br><br>Subject to O&G Lease MTM-023239C and<br>O&G Communitization Agreement MTM-<br>69166 Constitution Gas Trn – production<br>from MTM-023239C).<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |
| CL11<br>T1N, R46E,<br>S.4, L 1-4, S2NE,<br>E2SE | CUSTER/<br>COFFEE CATTLE<br>CO.             | 344.80  |  | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate 2 cultural sites.   |
| CF4<br>T2N, R45E,<br>S.26, ALL                  | CUSTER/<br>COFFEE CATTLE<br>CO.             | 640.00  | R/W MTM-264 TRECO<br>Pwrln N2NE (No<br>Expiration); R/W MTM-<br>57653 TRECO Pwrlin<br>N2NE, NW, NWSW,<br>NESE (Expires<br>07/30/2034);<br>WR - 42C 79478 00<br>(SENESE)<br>WR - 42C 79479 00<br>(SENESE)<br>WR - 42C 79480 00<br>(NWSENW)<br>WR - 42C 79481 00<br>(NWSENW)<br>WR - 42C 79483 00<br>(NENWNE)<br>WR - 42C 79482 00<br>(NENWNE)         | Reservation for Ditches and Canals and of<br>all minerals.  |

| Parcel #<br>Legal Description                        | County/<br>Permittee<br>(Base Prop. Lessor)   | Acreage | Valid Existing Rights<br>R/W = Right-of-Way<br>WR = Water Right  | Patent Reservations and/or Restrictions  |
|--|---|---------|--|--|
| CF5<br>T2N, R46E,<br>S.2, SESW                       | CUSTER/<br>COFFEE CATTLE<br>CO.   | 40.00   | R/W MTM-264 TRECO<br>Pwrln (No Expiration);<br>R/W MTM-57653<br>TRECO Pwrln (Expires<br>07/30/2034)  | Reservation for Ditches and Canals and of<br>all minerals.   |
| CF6<br>T2N, R46E,<br>S.4, SWSE                       | CUSTER/<br>COFFEE CATTLE<br>CO.   | 40.00   |  | Reservation for Ditches and Canals and of<br>all minerals.   |
| CF7<br>T2N, R46E,<br>S.6, L 5-7, E2SW, SE            | CUSTER/<br>COFFEE CATTLE<br>CO. (199 Ac.) and<br>JOHN E<br>HAMILTON (167<br>Ac.) (4.6 Ac.?) | 370.60  | R/W MTM-014398 MT<br>Hwy Comm (Tongue<br>River Rd) L7, E2SW,<br>NWSE (No Expiration)<br>WR - 42C 79484 00<br>(NESE)<br>WR - 42C 79485 00<br>(NESE)<br>WR - 42C 79486 00<br>(SENESE)<br>WR - 42C 79487 00<br>(SENESE)<br>WR - 42C 2142 00<br>(NWNESE) | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |
| CF8<br>T2N, R46E,<br>S.8, ALL                        | CUSTER/<br>COFFEE CATTLE<br>CO.   | 640.00  |  | Reservation for Ditches and Canals and of<br>all minerals.   |
| CF9<br>T2N, R46E,<br>S.10, ALL                       | CUSTER/<br>COFFEE CATTLE<br>CO.   | 640.00  | R/W MTM-57653<br>TRECO Pwrln E2E2<br>(Expires 07/30/2034);<br>R/W MTM-264 TRECO<br>Pwrln SESE (No<br>Expiration)   | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |
| CF10<br>T2N, R46E<br>S.12, ALL                       | CUSTER/<br>COFFEE CATTLE<br>CO.   | 640.00  | WR - 42C 79490 00<br>(NESENW)<br>WR - 42C 79491 00<br>(NESENW)<br>WR - 42C 79488 00<br>(NWSENW)<br>WR - 42C 79489 00<br>(NWSENW)   | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |
| CF11<br>T2N, R46E,<br>S.14, E2E2,NWNE,<br>S2SW, SWSE | CUSTER/<br>COFFEE CATTLE<br>CO.   | 320.00  | R/W MTM-264 TRECO<br>Pwrln NWNE, SWSE<br>(No Expiration)   | Reservation for Ditches and Canals and of<br>all minerals.   |
| CF12<br>T2N, R46E,<br>S.18, L.1-4, W2NE,<br>E2NW     | CUSTER/<br>COFFEE CATTLE<br>CO.   | 337.88  |  | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |

| Parcel #<br>Legal Description                             | County/<br>Permittee<br>(Base Prop. Lessor) | Acreage | Valid Existing Rights<br>R/W = Right-of-Way<br>WR = Water Right  | Patent Reservations and/or Restrictions  |
|---|---|---------|--|--|
| CF13<br>T2N, R46E,<br>S.20, ALL                           | CUSTER/<br>COFFEE CATTLE<br>CO.             | 640.00  |  | Reservation for Ditches and Canals and of all minerals.<br><br>TCF's designee will donate to the BLM a temporary non-exclusive easement for access to mitigate a cultural site.  |
| CF14<br>T2N, R46E,<br>S.24, ALL                           | CUSTER/<br>COFFEE CATTLE<br>CO.             | 640.00  | R/W MTM-57653<br>TRECO Pwrln NWNW<br>(Expires 07/30/2034)<br>WR - 42C 79492 00<br>(NESWSE)<br>WR - 42C 79493 00<br>(NESWSE)<br>WR - 42C 79494 00<br>(SWSWSW)<br>WR - 42C 79495 00<br>(SWSWSW)  | Reservation for Ditches and Canals and of all minerals.  |
| CF15<br>T2N, R46E,<br>S.30, L1-4, E2, E2W2                | CUSTER/<br>COFFEE CATTLE<br>CO.             | 658.00  | R/W MTM-264 TRECO<br>Pwrln L1-2, NE, E2NW<br>(No Expiration); R/W<br>MTM-57653 TRECO<br>Pwrln SWNE, E2NW<br>(Expires 07/30/2034)<br>WR - 42C 79496 00<br>(NWNESE)<br>WR - 42C 79497 00<br>(NWNESE)<br>WR - 42C 79498 00<br>(NENENE)<br>WR - 42C 79499 00<br>(NENENE)<br>WR - 42C 79500 00<br>(SESWNE)<br>WR - 42C 79501 00<br>(SESWNE) | Reservation for Ditches and Canals and of all minerals.  |
| CF16<br>T3N, R46E,<br>S.26, N2, SW, N2SE,<br>SWSE, N2SESE | CUSTER/<br>COFFEE CATTLE<br>CO.             | 620.00  | WR - 42C 79514 00<br>(NESWNW)<br>WR - 42C 79515 00<br>(NESWNW)   | Reservation for Ditches and Canals and of all minerals. 20 Acres will be retained by the BLM in the S½SE¼SE¼ - TCF will donate to the BLM a permanent non-exclusive easement for access to the 20 acres.<br><br>TCF's designee will donate to the BLM a temporary non-exclusive easement for access to mitigate a cultural site. |
| CF18<br>T3N, R46E,<br>S.34, ALL                           | CUSTER/<br>COFFEE CATTLE<br>CO.             | 640.00  | R/W MTM-014398 MT<br>Hwy Comm (Tongue<br>River Rd) NWNW (No<br>Expiration)<br>WR - 42C 79518 00<br>(SWNESE)<br>WR - 42C 79519 00<br>(SWNESE)   | Reservation for Ditches and Canals and of all minerals.  |
| CF19<br>T2N, R47E,<br>S.4, L.1                            | CUSTER/<br>COFFEE CATTLE<br>CO.             | 42.42   |  | Reservation for Ditches and Canals and of all minerals.  |

| Parcel #<br>Legal Description           | County/<br>Permittee<br>(Base Prop. Lessor)                                     | Acreage | Valid Existing Rights<br>R/W = Right-of-Way<br>WR = Water Right   | Patent Reservations and/or Restrictions  |
|---|---|---------|---|--|
| CF20<br>T2N, R47E,<br>S.6, L. 3-4, SWNE | CUSTER/<br>COFFEE CATTLE<br>CO.   | 126.12  | R/W MTM-59946<br>Custer Co. Road SWNE<br>(No Expiration); R/W<br>MTM-59032 Range Tele<br>SWNE (No Expiration)   | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |
| CF21<br>T2N, R47E,<br>S.8, E2NE         | CUSTER/<br>COFFEE CATTLE<br>CO.   | 80.00   |   | Reservation for Ditches and Canals and of<br>all minerals.   |
| CF22<br>T3N, R47E,<br>S.30, NE, NENW    | CUSTER/<br>COFFEE CATTLE<br>CO.   | 200.00  | WR - 42C 180462 00<br>(Sec 30)  | Reservation for Ditches and Canals and of<br>all minerals.   |
| H1<br>T3N, R46E,<br>S.28, S½S½          | CUSTER/<br>JOHN E.<br>HAMILTON  | 160.00  | R/W MTM-59032<br>Range Tele Coop SESE<br>(No Expiration); R/W<br>MTM-014398 MT Hwy<br>Comm – Tongue River<br>Rd SESE (No<br>Expiration)   | Reservation for Ditches and Canals and of<br>all minerals.   |
| H2<br>T2N, R45E,<br>S. 10 Lots 8 & 9    | CUSTER/<br>JOHN E.<br>HAMILTON  | 55.97   | Land Use Permit MTM-<br>83403 John Hamilton<br>Ag Permit (Expires<br>03/31/2008 – permit will<br>be cancelled prior to or<br>at the closing on the<br>exchange)   | Reservation for Ditches and Canals and of<br>all minerals.<br><br>Floodplain restriction below 2,680 foot<br>100-year flood level.<br><br>Restriction re. Bald Eagle Nest                |
| CF2<br>T2N, R45E,<br>S.14, ALL          | CUSTER/<br>COFFEE CATTLE<br>CO. (560 Ac.) and<br>JOHN E.<br>HAMILTON<br>(80Ac.) | 640.00  | R/W MTM-023275 MT<br>Hwy Comm (Tongue<br>River Rd) NW (No<br>Expiration); R/W MTM-<br>264 TRECO Pwrln<br>W2SW (No Expiration)<br>WR - 42C 79474 00<br>(SWNENE)<br>WR - 42C 79475 00<br>(SWNENE)<br>WR - 42C 79476 00<br>(NENWSW)<br>WR - 42C 79477 00<br>(NENWSW)<br>WR - 42C 79472 00<br>(SESWSW)<br>WR - 42C 79473 00<br>(SESWSW)<br>WR - 42C 180437 00<br>(SESWSW) | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |
| CF1<br>T2N, R45E,<br>S.12, L. 7-10      | CUSTER/<br>COFFEE CATTLE<br>CO.   | 149.51  |   | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |

| <b>Parcel #<br/>Legal Description</b> | <b>County/<br/>Permittee<br/>(Base Prop. Lessor)</b>                             | <b>Acreage</b>   | <b>Valid Existing Rights<br/>R/W = Right-of-Way<br/>WR = Water Right</b>   | <b>Patent Reservations and/or Restrictions</b>   |
|---------------------------------------|--|------------------|--|--|
| CF17<br>T3N, R46E,<br>S.32, ALL       | CUSTER/<br>COFFEE CATTLE<br>CO. (42 Ac.) and<br>JOHN E.<br>HAMILTON (598<br>Ac.) | 640.00           | R/W MTM-59032<br>Range Tele Coop<br>SWSW (No Expiration);<br>R/W MTM-014398 MT<br>Hwy Comm – Mat. Site<br>E2NENE (No<br>Expiration); R/W MTM-<br>59946 Custer Co. Road<br>– Tongue River Rd S2S2<br>(No Expiration);<br>WR - 42C 79516 00<br>(NESWSE)<br>WR - 42C 79517 00<br>(NESWSE) | Reservation for Ditches and Canals and of<br>all minerals.<br><br>TCF's designee will donate to the BLM a<br>temporary non-exclusive easement for<br>access to mitigate a cultural site. |
|                                       | <b>TOTAL FEDERAL<br/>ACRES<br/>(All in Custer<br/>County)</b>                    | <b>14,325.83</b> |  |  |

**Exhibit 2**

**PHASE 1 – NON-FEDERAL ACQUISITION TRACTS  
PUMPKIN CREEK RANCH LAND EXCHANGE**

| Non-Federal Lands for the Pumpkin Creek Land Exchange   |        |                  |  |  |   |
|---|--------|------------------|--|--|---|
| Principal Meridian<br>Montana – Custer<br>County  | Parcel | Approx.<br>Acres | Water Right #/<br>(Source)                   | Volume/Type/<br>Use/Mean<br>Of Diversion   | Action on water<br>right:   |
| T. 5 N., R. 48 E.,<br>Sec. 1, Lots 1-4,<br>S½N½, S½ (Less<br>Highway R/W) (all<br>non-Federal<br>minerals)  | O-1    | 619.99           | 42C 180199 00<br>(SWSESE)                    | 13.44 AcFt/<br>Groundwater/Stock/ Well   | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use  |
|   |        |                  | 42C 180220 00<br>(NENESE, SESWSE,<br>NESENW) | 420 cfs Irrig 280 Ac/<br>Surface (Pumpkin Creek)/<br>Flood Irrigation/Dike         | The BLM Acquire<br>Water Right Claim -<br>Continue Irrigation<br>Use  |
| T. 5 N., R. 48 E., Sec<br>2, S½NE¼,<br>SE¼NW¼, S½ (Less<br>Highway &<br>Telephone R/W & a<br>farmstead in that<br>portion of the<br>S½NE¼, and<br>NE¼SE¼ lying East<br>of Highway 59 with<br>the buildings and<br>associated<br>improvements -<br>approx. 67.07 ac.)<br>(all non-Federal<br>minerals) | O-2    | 365.82           | 42C 180200 00<br>(NENESE)                    | 13.44 AcFt/<br>Groundwater/Stock/ Well<br>(80')                                    | Prorate Water Right<br>Claim between the<br>BLM and TCF; TCF<br>will transfer its<br>prorated portion to<br>the new ranch<br>headquarters owner -<br>Continue Stock Use         |
|   |        |                  | 42C 180201 00<br>(SWNWSE)                    | 13.44 AcFt 15 GPM/<br>Groundwater/Stock/<br>Well                                   | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use  |
|   |        |                  | 42C 180202 00<br>(SWSESE, SESWSE)            | 420 cfs/Surface Res<br>(UnName Trib Pumpkin<br>Creek)/ Stock/Direct From<br>Source | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use  |
|   |        |                  | 42C 180221 00<br>(SESENE)                    | 90 cfs Irrig 60 Ac/ Surface<br>(Pumpkin Creek)/Flood<br>Irrigation/Dike            | Prorate Water Right<br>Claim between the<br>BLM and TCF; TCF<br>will transfer its<br>prorated portion to<br>the new ranch<br>headquarters owner -<br>Continue Irrigation<br>Use |
|   |        |                  | 42C 180222 00<br>(SWSESE, SESWSE)            | 135 cfs Irrig 90 Ac/ Surface<br>(Innes Creek)/Flood<br>Irrigation/Headgate         | Prorate Water Right<br>Claim between the<br>BLM and TCF; TCF<br>will transfer its<br>prorated portion to<br>the new ranch<br>headquarters owner -<br>Continue Irrigation<br>Use |
|   |        |                  | 42C 181537 00<br>(NENESE)                    | 1.5 AcFt 1.5 GPM/<br>Groundwater/Domestic/<br>Well (80')                           | TCF Water Right<br>Claim - Transfer to<br>New Ranch<br>Headquarters Owner   |

**Non-Federal Lands for the Pumpkin Creek Land Exchange**

| <b>Principal Meridian<br/>Montana – Custer<br/>County</b>   | <b>Parcel</b> | <b>Approx.<br/>Acres</b> | <b>Water Right #/<br/>(Source)</b> | <b>Volume/Type/<br/>Use/Mean<br/>Of Diversion</b>                               | <b>Action on water<br/>right:</b>                            |
|---|---------------|--------------------------|------------------------------------|---|--|
| T. 5 N., R. 48 E.,<br>Sec. 10, NE¼,<br>E½SE¼ (all Federal<br>minerals)  | O-5           | 240.00                   | None                               |   |  |
| T. 5 N., R. 48 E.,<br>Sec. 11, All (all non-<br>Federal minerals)   | O-6           | 640.00                   | None                               |   |  |
| T. 5 N., R. 48 E.,<br>Sec. 13, All (all non-<br>Federal minerals)   | O-7           | 640.00                   | None                               |   |  |
| T. 5 N., R. 48 E.,<br>Sec. 15, All (all non-<br>Federal minerals)   | O-8           | 640.00                   | 42C 180205 00<br>(SENESE)          | 120 AcFt/Surface Res (Dry<br>Creek)/Stock/ Direct From<br>Source                | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use |
|   |               |                          | 42C 180206 00<br>(SENESE)          | 13.44 AcFt/<br>Groundwater/Stock/ Well  | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use |
| T. 5 N., R. 48 E.,<br>Sec. 21, E½ (all non-<br>Federal minerals<br>with undivided 50%<br>previously retained)   | O-10          | 320.00                   | 42C 180210 00<br>(SENESE)          | 750 cfs/Surface Res<br>(UnNamed Trib Dry<br>Creek)/Stock/Direct From<br>Source  | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use |
| T. 5 N., R. 48 E.,<br>Sec. 23, All (all non-<br>Federal minerals)   | O-11          | 640.00                   | 42C 180209 00<br>(SENESE)          | 13.44 AcFt/<br>Groundwater/Stock/ Well  | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use |
| T. 5 N., R. 48 E.,<br>Sec. 25, All (all non-<br>Federal minerals)   | O-12          | 640.00                   | None                               |   |  |
| T. 5 N., R. 48 E.,<br>Sec. 27, All (all non-<br>Federal minerals<br>with undivided 50%<br>previously retained)  | O-13          | 640.00                   | 42C 180213 00<br>(SENESE)          | 13.44 AcFt 10 GPM/<br>Groundwater/Stock/ Well                                   | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use |
|   |               |                          | 42C 180214 00<br>(SENESE)          | 252 cfs/Surface Res<br>(UnNamed Trib Prat<br>Creek)/Stock/Direct From<br>Source | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use |
| T. 5 N., R. 48 E.,<br>Sec. 28, NE¼,<br>N½NW¼,<br>SE¼NW¼,<br>NE¼SW¼, N½SE¼<br>(all non-Federal<br>minerals with<br>undivided 50%<br>previously retained) | O-14          | 400.00                   | 42C 180215 00<br>(SENESE)          | 26.88 AcFt/Surface (Prat<br>Creek)/Stock/ Direct From<br>Source                 | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use |
|   |               |                          | 42C 180216 00<br>(NWSSEW)          | 13.44 AcFt/<br>Groundwater/Stock/ Well  | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use |
|   |               |                          | 42C 180217 00<br>(NWSSEW)          | 378 cfs/Surface Res<br>(UnNamed Trib Prat<br>Creek)/Stock/Direct From<br>Source | The BLM Acquire<br>Water Right Claim –<br>Continue Stock Use |

**Non-Federal Lands for the Pumpkin Creek Land Exchange**

| <b>Principal Meridian<br/>Montana – Custer<br/>County</b>   | <b>Parcel</b> | <b>Approx.<br/>Acres</b> | <b>Water Right #/<br/>(Source)</b>   | <b>Volume/Type/<br/>Use/Mean<br/>Of Diversion</b>                               | <b>Action on water<br/>right:</b>                                    |
|---|---------------|--------------------------|--------------------------------------|---|--|
| T. 5 N., R. 48 E.,<br>Sec. 29, N½,<br>N½NE¼SW¼,<br>N½SE¼ (all non-<br>Federal minerals<br>with undivided 50%<br>previously retained)  | O-15          | 420.00                   | None                                 |   |  |
| T. 5 N., R. 48 E.,<br>Sec. 34, All (all<br>Federal minerals)  | O-16          | 640.00                   | 42C 180219 00<br>(NESENW,<br>SWSWNE) | 252 cfs/Surface Res<br>(UnNamed Trib Prat<br>Creek)/Stock/Direct From<br>Source | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use         |
|   |               |                          | 42C 180218 00<br>(NWNWNE)            | 13.44 AcFt/<br>Groundwater/Stock/Well   | The BLM Acquire<br>Water Right Claim –<br>Continue Stock Use         |
| T. 5 N., R. 48 E.,<br>Sec. 35, All (all non-<br>Federal minerals<br>with undivided 50%<br>previously retained)  | O-17          | 640.00                   | 42C 180190 00<br>(NWNWSW)            | 13.44 AcFt 7 GPM/<br>Groundwater/Stock/ Well                                    | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use         |
|   |               |                          | 42C 180191 00<br>(NWNENE)            | 588 cfs/Surface Res<br>(UnNamed Trib Prat<br>Creek)/Stock/Direct From<br>Source | The BLM Acquire<br>Water Right Claim -<br>Continue Stock Use         |
| T. 5 N., R. 49 E.,<br>Sec. 6, Lots 1-7,<br>S½NE¼, SE¼NW¼,<br>E½SW¼, SE¼ (All)<br>(Lot 1 – 40.05 ac. –<br>Federal coal) (594.67<br>ac. - all non-Federal<br>minerals; Lot 1 –<br>40.05 ac. – all non-<br>Federal minerals<br>excluding coal) | O-18          | 634.72                   | 42C 180226 00<br>(SWSENE)            | 139.5 cfs Irrig 93 Ac/<br>Surface Res (Johnson<br>Creek)/Flood Irrigation/Dike  | The BLM Acquire<br>Water Right Claim -<br>Continue Irrigation<br>Use |
| T. 5 N., R. 49 E.,<br>Sec. 7, Lots 1-4, E½,<br>E½W½ (All) (Less<br>Highway R/W) (all<br>non-Federal<br>minerals)  | O-19          | 614.01                   | 42C 180223 00<br>(SENESE, SESENW)    | 375 cfs Irrig 250 Ac/<br>Surface (Pumpkin<br>Creek)/Flood Irrigation/<br>Dike   | The BLM Acquire<br>Water Right Claim -<br>Continue Irrigation<br>Use |
| T. 5 N., R. 49 E.,<br>Sec. 17, All (Less<br>Highway R/W) (all<br>non-Federal<br>minerals)   | O-20          | 614.00                   | 42C 180227 00<br>(NENESW)            | 165 cfs Irrig 115 Ac/<br>Surface (Bridge<br>Creek)/Flood Irrigation/Dike        | The BLM Acquire<br>Water Right Claim -<br>Continue Irrigation<br>Use |
|   |               |                          | 42C 180228 00<br>(NESESE)            | 405 cfs Irrig 270 Ac/<br>Surface (Pumpkin<br>Creek)/Flood Irrigation/ Dike      | The BLM Acquire<br>Water Right Claim –<br>Continue Irrigation<br>Use |



| Non-Federal Lands for the Pumpkin Creek Land Exchange   |        |                  |                                   |  |   |
|---|--------|------------------|-----------------------------------|--|---|
| Principal Meridian<br>Montana – Custer County   | Parcel | Approx. Acres    | Water Right #/<br>(Source)        | Volume/Type/<br>Use/Mean<br>Of Diversion                                   | Action on water right:                                      |
| T. 5 N., R. 49 E.,<br>Sec. 18, Lots 1-4,<br>E½, E½W½ (All)<br>(Less Highway R/W)<br>(Lots 2 & 3, NE¼,<br>SE¼NW¼,<br>NE¼SW¼ - 317.98<br>ac. – less approx.<br>12.87 acre Highway<br>R/W in the<br>NE¼NE¼ leaving<br>305.11 acres – all<br>non-Federal<br>minerals) (Lots 1 &<br>4, NE¼NW¼,<br>SE¼SW¼, SE¼ -<br>317.98 ac. – all<br>Federal minerals) | O-21   | 631.96           | 42C 180193 00<br>(NESESW)         | 450 cfs/Surface (UnNamed Trib Horse Creek)/Stock/Direct From Source        | The BLM Acquire Water Right Claim - Continue Irrigation Use |
|   |        |                  | 42C 80645 00<br>(NESESW)          | 5.45 AcFt 20 GPM/<br>Groundwater/Stock/ Well (450')                        | The BLM Acquire Water Right Cert - Continue Stock Use       |
| T. 5 N., R. 49 E.,<br>Sec. 19, Lots 1-4,<br>E½, E½W½ (All)<br>(all non-Federal minerals)  | O-22   | 636.88           | 42C 180194<br>(NWNWSW,<br>SWNWSW) | 13.44 AcFt/Surface (UnNamed Trib Tongue River)/Stock/Direct From Source    | The BLM Acquire Water Right Claim - Continue Stock Use      |
| T. 5 N., R. 49 E.,<br>Sec. 21, All that<br>portion lying<br>southwest of<br>Highway No. 312<br>(all non-Federal minerals)   | O-23   | 332.45           | 42C 180196 00<br>(SWSENW)         | 450 cfs/Surface Res (UnNamed Trib Pumpkin Creek)/Stock/ Direct From Source | The BLM Acquire Water Right Claim - Continue Stock Use      |
| T. 5 N., R. 49 E.,<br>Sec. 29, All (all non-Federal minerals)   | O-24   | 640.00           | 42C 180197 00<br>(SWSWNW)         | 26.88 AcFt/Surface (Bridge Creek)/Stock/ Diversion Dam                     | The BLM Acquire Water Right Claim - Continue Stock Use      |
| T. 5 N., R. 49 E.,<br>Sec. 31, Lots 1-4,<br>E½, E½W½ (All)<br>(all non-Federal minerals)  | O-25   | 639.32           | 42C 180198 00<br>(SENWSE)         | 324 cfs/Surface Res (UnNamed Trib Jack Creek)/Stock/Direct From Source     | The BLM Acquire Water Right Claim - Continue Stock Use      |
| <b>Total Non-Federal Acres<br/>(All in Custer County)</b>   |        | <b>12,229.15</b> |                                   |  |   |

**Exhibit 3**

**PHASE 1 – NON-FEDERAL ACQUISITION TRACT ENCUMBRANCES  
PUMPKIN CREEK RANCH LAND EXCHANGE**

| <b>Principal Meridian<br/>Montana –<br/>Custer County</b>  | <b>Parcel</b> | <b>Approx.<br/>Acres</b> | <b>ENCUMBRANCE</b>   |
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| T. 5 N., R. 48 E.,<br>Sec. 1, Lots 1-4,<br>S½N½, S½ (Less<br>Highway R/W) (all<br>non-Federal<br>minerals)   | O-1           | 619.99                   | <p>- Bargain and Sale Deed, dated June 6, 1961, conveying to the State of Montana for the Department of Highways, a tract of land in the NW¼SW¼, S½SW¼, Section 1.</p> <p>- Right-of-Way Deed, dated November 3, 1930, granting a perpetual easement and right-of-way to the State of Montana for the construction of a State highway over, across, covering and embracing a tract of land in Section 1, containing 6.17 acres, more or less – present highway acreage .37 acre.</p> <p>- Easement Deed, dated November 17, 1930, granting to the State of Montana the right to use and occupy for a public road a tract of land in Section 1, containing exclusive of that portion now in an existing public highway, 5.80 acres, more or less.</p> |
| T. 5 N., R. 48 E.,<br>Sec 2, S½NE¼,<br>SE¼NW¼, S½<br>(Less Highway &<br>Telephone R/W &<br>a farmstead in that<br>portion of the<br>S½NE¼, and<br>NE¼SE¼ lying<br>East of Highway<br>59 with the<br>buildings and<br>associated<br>improvements -<br>approx. 67.07 ac.)<br>(all non-Federal<br>minerals) | O-2           | 365.82                   | <p>- Bargain and Sale Deed, dated June 6, 1961, conveying to the State of Montana for the Department of Highways, a tract of land in the S½NE¼, E½SE¼, Section 2.</p> <p>- Right-of-Way Deed, dated November 1, 1930, granting a perpetual easement and right-of-way to the State of Montana for the construction of a State highway over, across, covering and embracing a tract of land in the S½, S½NE¼, Section 2, containing 7.11 acres, more or less.</p> <p>- Telephone Company Right-of-Way Easement issued to The Range Telephone Cooperative, Inc. granting a 20' right-of-way in and through the NE¼SE¼ of Section 2.</p>   |
| T. 5 N., R. 48 E.,<br>Sec. 10, NE¼,<br>E½SE¼ (all<br>Federal minerals)   | O-5           | 240.00                   |  |
| T. 5 N., R. 48 E.,<br>Sec. 11, All (all<br>non-Federal<br>minerals)  | O-6           | 640.00                   |  |
| T. 5 N., R. 48 E.,<br>Sec. 13, All (all<br>non-Federal<br>minerals)  | O-7           | 640.00                   |  |

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| T. 5 N., R. 48 E.,<br>Sec. 15, All (all<br>non-Federal<br>minerals)   | O-8  | 640.00 |  |
| T. 5 N., R. 48 E.,<br>Sec. 21, E½ (all<br>non-Federal<br>minerals with<br>undivided 50%<br>previously<br>retained)  | O-10 | 320.00 | - Warranty Deed, dated March 19, 1985, Reservation by Rogers Ranch, Inc., of an undivided 50% of all minerals, including but not limited to oil, gas, coal and gravel, presently owned by the Grantor, located in, on and under the E½, Section 21, together with the right of ingress and egress thereto and therefrom for the purpose of exploring for, developing and removing the same. It is the intention of Grantor to equally divide the existing minerals owned by the Grantor, provided Grantee shall be entitled to use such gravel as he desires for his own use.                                |
| T. 5 N., R. 48 E.,<br>Sec. 23, All (all<br>non-Federal<br>minerals)   | O-11 | 640.00 |  |
| T. 5 N., R. 48 E.,<br>Sec. 25, All (all<br>non-Federal<br>minerals)   | O-12 | 640.00 |  |
| T. 5 N., R. 48 E.,<br>Sec. 27, All (all<br>non-Federal<br>minerals with<br>undivided 50%<br>previously<br>retained)   | O-13 | 640.00 | - Warranty Deed, dated March 19, 1985, Reservation by Rogers Ranch, Inc., of an undivided 50% of all minerals, including but not limited to oil, gas, coal and gravel, presently owned by the Grantor, located in, on and under the All of Section 27, together with the right of ingress and egress thereto and therefrom for the purpose of exploring for, developing and removing the same. It is the intention of Grantor to equally divide the existing minerals owned by the Grantor, provided Grantee shall be entitled to use such gravel as he desires for his own use.                             |
| T. 5 N., R. 48 E.,<br>Sec. 28, NE¼,<br>N½NW¼,<br>SE¼NW¼,<br>NE¼SW¼,<br>N½SE¼ (all non-<br>Federal minerals<br>with undivided<br>50% previously<br>retained) | O-14 | 400.00 | - Warranty Deed, dated March 19, 1985, Reservation by Rogers Ranch, Inc., of an undivided 50% of all minerals, including but not limited to oil, gas, coal and gravel, presently owned by the Grantor, located in, on and under the NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, N½SE¼, Section 28, together with the right of ingress and egress thereto and therefrom for the purpose of exploring for, developing and removing the same. It is the intention of Grantor to equally divide the existing minerals owned by the Grantor, provided Grantee shall be entitled to use such gravel as he desires for his own use. |
| T. 5 N., R. 48 E.,<br>Sec. 29, N½,<br>N½NE¼SW¼,<br>N½SE¼ (all non-<br>Federal minerals<br>with undivided<br>50% previously<br>retained)                     | O-15 | 420.00 | - Warranty Deed, dated March 19, 1985, Reservation by Rogers Ranch, Inc., of an undivided 50% of all minerals, including but not limited to oil, gas, coal and gravel, presently owned by the Grantor, located in, on and under the N½, N½NE¼SW¼, N½SE¼, Section 29, together with the right of ingress and egress thereto and therefrom for the purpose of exploring for, developing and removing the same. It is the intention of Grantor to equally divide the existing minerals owned by the Grantor, provided Grantee shall be entitled to use such gravel as he desires for his own use.               |
| T. 5 N., R. 48 E.,<br>Sec. 34, All (all<br>Federal minerals)  | O-16 | 640.00 |  |

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| T. 5 N., R. 48 E., Sec. 35, All (all non-Federal minerals with undivided 50% previously retained)   | O-17 | 640.00 | - Warranty Deed, dated March 19, 1985, Reservation by Rogers Ranch, Inc., of an undivided 50% of all minerals, including but not limited to oil, gas, coal and gravel, presently owned by the Grantor, located in, on and under the All of Section 35, together with the right of ingress and egress thereto and therefrom for the purpose of exploring for, developing and removing the same. It is the intention of Grantor to equally divide the existing minerals owned by the Grantor, provided Grantee shall be entitled to use such gravel as he desires for his own use.   |
| T. 5 N., R. 49 E., Sec. 6, Lots 1-7, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ (All) (Lot 1 – 40.05 ac. – Federal coal) (594.67 ac. - all non-Federal minerals; Lot 1 – 40.05 ac. – all non-Federal minerals excluding coal) | O-18 | 634.72 | - Bargain and Sale Deed, dated June 6, 1961, conveying to the State of Montana for the Department of Highways a tract of land in the N $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ , Section 21, an area containing 18.67 acres, more or less – existing highway constitutes 5.42 acres.   |
| T. 5 N., R. 49 E., Sec. 7, Lots 1-4, E $\frac{1}{2}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ (All) (Less Highway R/W) (all non-Federal minerals)  | O-19 | 614.01 | - Bargain and Sale Deed, dated June 6, 1961, conveying to the State of Montana for the Department of Highways, a tract of land in Lots 2 and 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 7.<br><br>- Right-of-Way Deed, dated November 5, 1930, granting a perpetual easement and right-of-way to the State of Montana for the construction of a State highway over, across, covering and embracing a tract of land in Section 7, containing 12.89 acres, more or less, excepting however, 4.13 acres herein described which constitute a part of the existing public highway.   |
| T. 5 N., R. 49 E., Sec. 17, All (Less Highway R/W) (all non-Federal minerals)   | O-20 | 614.00 | - Bargain and Sale Deed, dated June 6, 1961, conveying to the State of Montana for the Department of Highways, a tract of land in the S $\frac{1}{2}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 17.<br><br>- Right-of-Way Deed, dated November 5, 1930, granting a perpetual easement and right-of-way to the State of Montana for the construction of a State highway over, across, covering and embracing a tract of land in Section 17, containing 14.48 acres, more or less.<br><br>- Easement, not dated, acknowledged November 29, 2001, in favor of The Range Telephone Cooperative, Inc. for a 20 foot right-of-way in and through the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 17.<br><br>- Easement, dated May 8, 2002, in favor of the State of Montana, Department of Transportation, covering a tract of land in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 17, containing an area of 1.11 acres, more or less.<br><br>- Easement, dated July 31, 2003, in favor of the State of Montana Department of Transportation, covering a tract of land in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 17, containing an area of 0.31 acre, more or less. |

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| T. 5 N., R. 49 E.,<br>Sec. 18, Lots 1-4,<br>E½, E½W½ (All)<br>(Less Highway<br>R/W) (Lots 2 & 3,<br>NE¼, SE¼NW¼,<br>NE¼SW¼ -<br>317.98 ac. – less<br>approx. 12.87 acre<br>Highway R/W in<br>the NE¼NE¼<br>leaving 305.11<br>acres – all non-<br>Federal minerals)<br>(Lots 1 & 4,<br>NE¼NW¼,<br>SE¼SW¼, SE¼ -<br>317.98 ac. – all<br>Federal minerals) | O-21 | 631.96           | <p>- Bargain and Sale Deed, dated June 6, 1961, conveying to the State of Montana for the Department of Highways, a tract of land in the NE¼NE¼, Section 18.</p> <p>- Right-of-Way Deed, dated September 2, 1930, granting a perpetual easement and right-of-way for the construction of a State highway over, across, covering and embracing a tract of land in the NE¼, Section 18, containing 2.85 acres, more or less.</p>  |
| T. 5 N., R. 49 E.,<br>Sec. 19, Lots 1-4,<br>E½, E½W½ (All)<br>(all non-Federal<br>minerals)   | O-22 | 636.88           |   |
| T. 5 N., R. 49 E.,<br>Sec. 21, All that<br>portion lying<br>southwest of<br>Highway No. 312<br>(all non-Federal<br>minerals)  | O-23 | 332.45           | <p>- Bargain and Sale Deed, dated June 6, 1961, conveying to the State of Montana for the Department of Highways, a tract of land in the N½NW¼, SE¼NW¼, SW¼NE¼, SE¼, Section 21, containing 18.67 acres, more or less, including however, 5.42 acres herein described which constitute a part of an existing public highway.</p> <p>- Right-of-Way Deed, dated November 5, 1930, granting a perpetual easement and right-of-way to the State of Montana for the construction of a State highway over, across, covering and embracing a tract of land in Section 21, containing 15.11 acres, more or less, excepting however, .17 acres herein described which constitute a part of the existing public highway.</p> |
| T. 5 N., R. 49 E.,<br>Sec. 29, All (all<br>non-Federal<br>minerals)   | O-24 | 640.00           |   |
| T. 5 N., R. 49 E.,<br>Sec. 31, Lots 1-4,<br>E½, E½W½ (All)<br>(all non-Federal<br>minerals)   | O-25 | 639.32           |   |
| <b>Total Non-<br/>Federal Acres<br/>(All in Custer<br/>County)</b>  |      | <b>12,229.15</b> |   |